

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN HEINZ, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

AMAZON.COM, INC. and DOES 1 through
10, inclusive, and each of them,

Defendants.

No. 2:23-CV-01073-JNW

**AMAZON'S REPLY IN SUPPORT OF
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF RENEWED MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:
October 13, 2023

I. INTRODUCTION

Defendant Amazon.com, Inc. (“Amazon”) respectfully requested the Court take judicial notice of 10 documents pursuant to Federal Rule of Evidence 201. *See* Dkt. 54 (“RJN”). Plaintiff Brian Heinz filed no opposition to Amazon’s request, waiving any objections he might have had. “[I]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.” LCR 7(b)(2); *Guillory v. Snohomish Cnty. Jail*, 2007 WL 2069856, at *8 n.3 (W.D. Wash. July 16, 2007) (“[B]oth case law ... and our own Local Rules (‘If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit’; LR 7(b)(2)) support a finding in Defendant’s favor based on Plaintiff’s non-response alone.”). Plaintiff’s counsel notes the Amazon.com Privacy Notice (“Privacy Notice”) submitted in connection with Amazon’s Renewed Motion to Dismiss Plaintiff’s First Amended Complaint, *see* Dkt. 52 (“Renewed Motion”), is “formatted completely differently” from the same Privacy Notice submitted in connection with Amazon’s Motion to Transfer or Dismiss Plaintiff’s First Amended Complaint, filed in the Eastern District of California, *see* Dkt. 24 (“Transfer Motion”). Dkt. 59-1 (Declaration of Craig W. Straub) ¶ 5. The Privacy Notice to which Plaintiff’s counsel refers was submitted with the declaration of Eugide Matondo. *See* Dkt 24-1 (“Matondo Declaration”), Exs. C & D. Mr. Matondo, as an Amazon employee, was familiar with and had access to internal versions of the Privacy Policy, which Amazon supplied because the internal version is easier to read than the judicially noticeable web printouts. But Amazon did not request judicial notice of these internal versions; rather, it requested notice of web printouts identical to those supplied in connection with this Request. *See* Dkt. 24-2 (Declaration of John A. Goldmark ISO Transfer Motion (“Goldmark Decl.”)), Exs. G–J; Dkt. 24-3 (Request for Judicial Notice ISO Transfer Motion) at 1 (citing Goldmark Decl.).

In any event, the Privacy Notice’s language in both the internal version attached to the Matondo Declaration and the web printout for which Amazon now requests judicial notice is

1 identical, and Plaintiff's counsel does not claim otherwise. Indeed, Plaintiff's counsel raises no
2 objection to or concern with the authenticity of the Privacy Notice (nor can he).

3 II. CONCLUSION

4 Heinz does not oppose judicial notice of the 10 documents identified in Amazon's
5 Request, and the Court should grant the Request as to each.

6 DATED this 13th day of October, 2023.

7 DAVIS WRIGHT TREMAINE LLP
8 Attorneys for Amazon.com, Inc.

9 By /s/ John Goldmark

10 John A. Goldmark, WSBA #40980
11 920 Fifth Avenue, Suite 3300
12 Seattle, WA 98104-1610
13 Telephone: (206) 757-8136
14 Email: johngoldmark@dwt.com

15 James H. Moon (*pro hac vice*)
16 Heather F. Canner (*pro hac vice*)
17 Sancho Accorsi (*pro hac vice*)
18 865 S. Figueroa St., 24th Floor
19 Los Angeles, California 90017-2566
20 Telephone: (213) 633-6800
21 Fax: (213) 633-6899
22 Email: jamesmoon@dwt.com
23 Email: heathercanner@dwt.com
24 Email: sanchoaccorsi@dwt.com

I certify that this memorandum contains 410 words,
in compliance with the Local Civil Rules.